

109TH CONGRESS
1ST SESSION

H. R. 1508

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to facilitate automatic enrollment in 401(k) plans, and for related purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 6, 2005

Mr. EMANUEL (for himself, Mr. COOPER, Ms. HARMAN, Mr. VAN HOLLEN, Ms. WASSERMAN SCHULTZ, and Mr. BECERRA) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to facilitate automatic enrollment in 401(k) plans, and for related purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “401(k) Automatic En-
5 rollment Act of 2005”.

1 **SEC. 2. AUTOMATIC ENROLLMENT ARRANGEMENTS.**

2 (a) IN GENERAL.—Section 401(k) of such Code is
3 amended by adding at the end the following new para-
4 graph:

5 “(13) AUTOMATIC ENROLLMENT ARRANGE-
6 MENTS.—

7 “(A) IN GENERAL.—If the requirements of
8 subparagraphs (B) through (F) are met, a cash
9 or deferred arrangement shall not fail to be
10 treated as satisfying the requirements of para-
11 graph (2)(A) merely because elective deferrals
12 (as defined in section 402(g)(3)) are contrib-
13 uted on behalf of eligible employees to a trust
14 under the plan of which such arrangement is a
15 part without an affirmative election by the em-
16 ployee to make such contributions.

17 “(B) ELECTION OUT.—The requirements
18 of this subparagraph are met if the employee
19 may elect to receive any future amount of the
20 contributions described in subparagraph (A) di-
21 rectly in cash in lieu of such contributions.

22 “(C) AMOUNT OF CONTRIBUTIONS.—The
23 requirements of this subparagraph are met if
24 the contributions described in subparagraph (A)
25 are made in an amount equal to—

1 “(i) in the case of an employee with
2 respect to whom an election is in effect
3 under subparagraph (B), zero,

4 “(ii) in the case of an employee who
5 makes an affirmative election regarding
6 the specific amount of such contributions
7 (expressed either as a percentage or as a
8 dollar amount of compensation), such
9 amount, and

10 “(iii) in the case of any other em-
11 ployee, such percentage or dollar amount
12 of compensation as is specified under the
13 plan for purposes of this paragraph,
14 provided that if subparagraphs (A) and (B)
15 apply to fewer than all eligible employees, the
16 automatic enrollment arrangement shall be
17 treated as applying to such employees and to
18 the employees who are described in clauses (i)
19 and (ii).

20 “(D) INVESTMENT OF CONTRIBUTIONS.—
21 The requirements of this subparagraph are met
22 if the contributions described in subparagraph
23 (A) are not invested in qualifying employer se-
24 curities (as defined in section 4975(e)(8)) or
25 qualifying employer real property (as defined in

1 section 407(d)(4) of the Employee Retirement
2 Income Security Act of 1974) unless such in-
3 vestment is affirmatively elected by the em-
4 ployee.

5 “(E) TIME OF CONTRIBUTIONS.—The re-
6 quirements of this subparagraph are met if the
7 contributions described in subparagraph (A)
8 with respect to any employee begin not later
9 than the date described in section 410(a)(4)
10 with respect to such employee.

11 “(F) NOTICE.—The requirements of this
12 subparagraph are met if the employer provides
13 notice, as follows:

14 “(i) IN GENERAL.—The administrator
15 of a plan which includes an automatic en-
16 rollment arrangement (determined without
17 regard to this subparagraph) shall, within
18 a reasonable period before the first day of
19 each plan year, give to each employee to
20 whom an automatic enrollment arrange-
21 ment applies for such plan year notice of
22 the employee’s rights and obligations under
23 the arrangement which—

1 “(I) is sufficiently accurate and
2 comprehensive to apprise the employee
3 of such rights and obligations, and

4 “(II) is written in a manner cal-
5 culated to be understood by the aver-
6 age employee to whom the arrange-
7 ment applies.

8 “(ii) REQUIREMENTS.— A notice shall
9 not be treated as meeting the requirements
10 of clause (i) with respect to an employee
11 unless—

12 “(I) the notice includes an expla-
13 nation of the employee’s right under
14 the arrangement to elect not to have
15 elective contributions made on the em-
16 ployee’s behalf (or to elect to have
17 such contributions made at a different
18 percentage or rate than that specified
19 as the automatic enrollment contribu-
20 tion percentage), including how and
21 when such elections may be made,

22 “(II) the employee has a reason-
23 able period of time, after receipt of
24 the notice and before the first elective
25 contribution is made on the employ-

1 ee's behalf pursuant to automatic en-
2 rollment, to make such election,

3 “(III) the notice describes any
4 employer matching contributions or
5 other employer contributions available
6 under the arrangement, and

7 “(IV) the notice explains how
8 contributions made under the ar-
9 rangement will be invested in the ab-
10 sence of any investment election by
11 the employee.

12 “(G) UNWIND DISTRIBUTIONS.—

13 “(i) IN GENERAL.—An automatic en-
14 rollment arrangement shall not fail to be
15 treated as a qualified cash or deferred ar-
16 rangement merely because the plan allows
17 an employee to opt out retroactively to the
18 beginning of the plan year and make an
19 unwind distribution during such plan year
20 if such employee is not eligible to make
21 elective contributions to the plan during
22 the remainder of the plan year after the
23 date of such distribution. This clause shall
24 not apply more than once with respect to
25 any employee of an employer.

1 “(ii) TAX TREATMENT OF DISTRIBUTION.—An unwind distribution shall be in-
2 cludible in the gross income of the em-
3 ployee. No tax shall be imposed under sec-
4 tion 72(t) on any such distribution.

6 “(iii) UNWIND DISTRIBUTION DE-
7 FINED.—For purposes of this subpara-
8 graph, the term ‘unwind distribution’
9 means a distribution to a participant who
10 is not a highly compensated employee (as
11 defined in section 414(q)) of contributions
12 described in subparagraph (A) (and earn-
13 ings attributable thereto) from an auto-
14 matic enrollment arrangement in which the
15 account balance of the participant imme-
16 diately before such distribution does not
17 exceed the greater of—

18 “(I) \$400, or

19 “(II) the amount of such con-
20 tributions made in connection with
21 not more than the first 4 payroll peri-
22 ods following the application of sub-
23 paragraph (A) to the participant.

24 “(iv) EMPLOYER MATCHING CON-
25 TRIBUTIONS.—In the case of any unwind

1 distribution, employer matching contribu-
2 tions shall be forfeited or subject to such
3 other treatment as the Secretary may pre-
4 scribe through regulations or other guid-
5 ance.

6 “(v) UNWOUND CONTRIBUTIONS NOT
7 TAKEN INTO ACCOUNT.—Contributions at-
8 tributable to an unwind distribution shall
9 not be taken into account for purposes of
10 paragraph (3).

11 “(H) AUTOMATIC OR AFFIRMATIVELY
12 ELECTED INCREASE IN CONTRIBUTION
13 AMOUNTS.—An automatic enrollment arrange-
14 ment shall not fail to be treated as a qualified
15 cash or deferred arrangement merely because
16 the plan—

17 “(i) permits eligible employees to elect
18 to have the percentage or dollar amount
19 described in subparagraph (C)(iii) auto-
20 matically increased from time to time in
21 the future by a specified percentage or dol-
22 lar amount of compensation based on such
23 factors as increases in compensation, pas-
24 sage of time, or increases in years of serv-
25 ice or participation, or

1 “(ii) provides for one or more of the
2 increases described in clause (i) to occur
3 automatically unless the eligible employee
4 elects otherwise,
5 provided that, in the case of either clause (i) or
6 (ii), the employee may elect to stop such in-
7 creases with respect to any future contributions.

8 “(I) REGULATIONS AND REPORTING.—The
9 Secretary is authorized to prescribe regulations
10 or other administrative guidance to carry out
11 this paragraph, including—

12 “(i) simplified methods of reporting
13 and otherwise implementing the unwind of
14 tax consequences and plan qualification
15 consequences in order to simplify those
16 consequences for participants and plan
17 sponsors, and

18 “(ii) simplified methods for plan ad-
19 ministrators to implement automatic en-
20 rollment arrangements and any provisions
21 necessary to prevent abuse in connection
22 with such arrangements..

23 “(J) AUTOMATIC ENROLLMENT ARRANGE-
24 MENT.—For purposes of this paragraph, the
25 term ‘automatic enrollment arrangement’

1 means an arrangement to which subparagraph
2 (A) applies.”.

3 (b) SAFE HARBOR AUTOMATIC ENROLLMENT AR-
4 RANGEMENTS UNDER SIMPLE RETIREMENT AC-
5 COUNTS.—

6 (1) Clause (i) of section 408(p)(2)(A) of such
7 Code is amended by adding at the end the following
8 new flush language:

9 “but only if such arrangement is an auto-
10 matic enrollment arrangement (as defined
11 in section 401(k)(13)) that meets the re-
12 quirements of subclauses (I), (IV), and (V)
13 of section 401(k)(12)(G)(i) (applied in the
14 case of such subclause (V) by substituting
15 “3 percent” for “minimum contribution
16 percentage” therein), ”.

17 (2) Subsection (p) of section 408 of such Code
18 (relating to simple retirement accounts) is amended
19 by adding at the end the following new paragraph:

20 “(10) SAFE HARBOR AUTOMATIC ENROLLMENT
21 ARRANGEMENTS.—Under regulations prescribed by
22 the Secretary, rules similar to the rules of section
23 401(k)(13) shall apply for purposes of this sub-
24 section, provided that the Secretary may adapt such
25 rules as he determines to be necessary or advisable

1 to take into account the differences between the pro-
2 visions of section 401(k) and this subsection.”.

3 (c) AUTOMATIC ENROLLMENT ARRANGEMENTS
4 UNDER 403(b) PLANS.—Subsection (b) of section 403 of
5 such Code (relating to taxability of beneficiary under an-
6 nuity purchased by section 501(c)(3) organization or pub-
7 lic school) is amended by adding at the end the following
8 new paragraph:

9 “(14) AUTOMATIC ENROLLMENT ARRANGE-
10 MENTS.—Under regulations prescribed by the Sec-
11 retary, rules similar to the rules of section
12 401(k)(13) shall apply for purposes of this sub-
13 section, provided that the Secretary may adapt such
14 rules as he determines to be necessary or advisable
15 to take into account the differences between the pro-
16 visions of section 401(k) and this subsection.”.

17 (d) AUTOMATIC ENROLLMENT ARRANGEMENTS
18 UNDER SECTION 457 PLANS.—Subsection (e) of section
19 457 of such Code is amended by adding at the end the
20 following new paragraph:

21 “(19) AUTOMATIC ENROLLMENT ARRANGE-
22 MENTS.—Under regulations prescribed by the Sec-
23 retary, rules similar to the rules of section
24 401(k)(13) shall apply for purposes of this section,
25 provided that the Secretary may adapt such rules as

1 he determines to be necessary or advisable to take
2 into account the differences between the provisions
3 of section 401(k) and this section.”.

4 (e) 401(k) PLAN MATCHING SAFE HARBOR WITH
5 AUTOMATIC ENROLLMENT.—

6 (1) IN GENERAL.—Clause (i) of section
7 401(k)(12)(B) of such Code is amended to read as
8 follows:

9 “(i) IN GENERAL.—The requirements
10 of this subparagraph are met if—

11 “(I) the arrangement is an auto-
12 matic enrollment arrangement (as de-
13 fined in paragraph (13)) which meets
14 the requirements of subparagraph
15 (G), and

16 “(II) under the arrangement, the
17 employer makes matching contribu-
18 tions on behalf of each employee who
19 is not a highly compensated employee
20 in an amount equal to 50 percent of
21 the elective contributions of the em-
22 ployee to the extent that such elective
23 contributions do not exceed 6 percent
24 of the employee’s compensation.”.

1 (2) IN GENERAL.—Paragraph (12) of section
2 401(k) of such Code (relating to alternative methods
3 of meeting nondiscrimination requirements) is
4 amended by adding at the end the following new
5 subparagraph:

6 “(G) AUTOMATIC ENROLLMENT.—

7 “(i) IN GENERAL.—An automatic en-
8 rollment arrangement meets the require-
9 ments of this subparagraph if—

10 “(I) elective contributions are
11 made under the arrangement with re-
12 spect to each eligible employee (other
13 than employees with respect to whom
14 an election is in effect under para-
15 graph (13)(B)) for such year,

16 “(II) any election under subpara-
17 graph (B) or (C)(ii) of paragraph (13)
18 remains in effect with respect to any
19 employee for a period of 3 years un-
20 less the plan provides for a shorter pe-
21 riod or unless the employee makes a
22 new election thereunder or has elected
23 an automatic increase in the employ-
24 ee’s contribution percentage,

1 “(III) 85 percent or more of eli-
2 gible employees participated in the ar-
3 rangement at any time during the
4 previous plan year (unless the em-
5 ployer has reason to know that such
6 time is not representative of participa-
7 tion during such year), and

8 “(IV) the plan specifies a per-
9 centage for purposes of paragraph
10 (13)(C)(iii) which is equal to the min-
11 imum contribution percentage, which
12 shall not apply to any employee de-
13 scribed in clause (i) or (ii) of para-
14 graph (13)(C), and which may be fur-
15 ther increased in accordance with
16 paragraph (13)(H)(i).

17 “(ii) MINIMUM CONTRIBUTION PER-
18 CENTAGE.—For purposes of this subpara-
19 graph, the term ‘minimum contribution
20 percentage’ means, with respect to the first
21 plan year for which an employee was eligi-
22 ble to participate, a percentage of not less
23 than 3 percent, and with respect to any
24 subsequent plan year, a percentage equal
25 to such percentage for the first plan year

1 increased by either 1 percent or 2 percent
2 for each subsequent plan year (as the plan
3 may provide), except as provided in clauses
4 (iii) and (iv).

5 “(iii) 9 PERCENT LIMITATION.—The
6 minimum contribution percentage shall not
7 exceed 9 percent for any plan year.

8 “(iv) LIMITATION BASED ON IN-
9 CREASE IN EMPLOYEE COMPENSATION.—
10 With respect to any plan year beginning
11 after the first plan year for which such em-
12 ployee was eligible to participate in the
13 plan, the minimum contribution percentage
14 with respect to such employee shall not ex-
15 ceed the sum of the minimum contribution
16 percentage with respect to such employee
17 for the prior plan year, plus the percentage
18 increase in the employee’s compensation
19 with respect to the current plan year (as
20 determined under the plan and consistent
21 with such requirements as the Secretary
22 may provide).

23 “(v) REGULATIONS.—The Secretary
24 may provide for alternative or simplified
25 methods of compliance with any provision

1 of this subparagraph as the Secretary de-
2 termines to be necessary or advisable to
3 simplify plan administration or prevent
4 abuse, including simplified methods of ad-
5 ministering automatic enrollment and
6 automatic contribution percentage in-
7 creases for employees who are not newly
8 eligible employees.”.

9 (f) EFFECTIVE DATES.—

10 (1) IN GENERAL.—Except as provided in para-
11 graphs (2) and (3), the amendments made by this
12 section shall apply to plan years beginning after De-
13 cember 31, 2005.

14 (2) QUALIFYING EMPLOYER SECURITIES AND
15 REAL PROPERTY.—In the case of a plan that, as of
16 January 1, 2005, uses an automatic enrollment ar-
17 rangement that does not comply with subparagraph
18 (D) of section 401(k)(13) of the Internal Revenue
19 Code of 1986, as amended by this section, such sub-
20 paragraph shall apply to plan years beginning after
21 December 31, 2006.

22 (3) ALTERNATIVE METHODS OF MEETING NON-
23 DISCRIMINATION REQUIREMENTS.—In the case of a
24 plan to which section 401(k)(12)(B) or section
25 408(p)(2) (other than subparagraph (B) thereof) of

1 the Internal Revenue Code of 1986 applies on Janu-
 2 ary 1, 2005, the amendments made by this section
 3 shall apply to plan years beginning after December
 4 31, 2007.

5 **SEC. 3. PREEMPTION OF STATE LAWS PRECLUDING AUTO-**
 6 **MATIC ENROLLMENT OR AUTOMATIC ROLL-**
 7 **OVERS.**

8 (a) IN GENERAL.—Section 514 of the Employee Re-
 9 tirement Income Security Act of 1974 (29 U.S.C.
 10 1144(b)) is amended—

11 (1) by redesignating subsection (d) as sub-
 12 section (e); and

13 (2) by inserting after subsection (c) the fol-
 14 lowing new subsection:

15 “(d) The provisions of this title shall supersede any
 16 and all State laws insofar as they may preclude, or have
 17 the effect of precluding—

18 “(1) the establishment or operation of, or mak-
 19 ing of contributions to, a pension plan under an
 20 automatic enrollment arrangement (as defined in
 21 section 401(k)(13) of the Internal Revenue Code of
 22 1986), or

23 “(2) a distribution described in section
 24 401(a)(31)(B) of such Code or the establishment or
 25 operation of an individual retirement plan (as de-

1 fined in section 7701(a)(37) of the Internal Revenue
 2 Code of 1986) allowing receipt of such distribu-
 3 tions.”.

4 (b) EFFECTIVE DATE.—The amendments made by
 5 this section shall apply with respect to actions (described
 6 in paragraph (1) or (2) of section 514(d) of the Employee
 7 Retirement Income Security Act of 1974 (added by this
 8 section)) taken before, on, or after the date of the enact-
 9 ment of this Act.

10 **SEC. 4. LIMITATION OF FIDUCIARY RESPONSIBILITIES**
 11 **WITH RESPECT TO AUTOMATIC ROLLOVER.**

12 (a) IN GENERAL.—Section 404(c)(3) of the Em-
 13 ployee Retirement Income Security Act of 1974 (29
 14 U.S.C. 1104(c)(3)) is amended to read as follows:

15 “(3) In the case of a pension plan which makes a
 16 transfer to an individual retirement account or annuity
 17 (described in section 408 of the Internal Revenue Code
 18 of 1986) of a designated trustee or issuer under section
 19 401(a)(31)(B) of such Code—

20 “(A) the duties described in subsections (a) and
 21 (b) shall not apply to the assets in the account or
 22 annuity except for the initial investment of such as-
 23 sets in the account or annuity, and

24 “(B) a fiduciary of the plan shall have no re-
 25 sponsibility for any losses attributable to such initial

1 investment (or any other investment in the account
2 or annuity) which occur after—

3 “(i) the earliest of—

4 “(I) an affirmative election by the
5 owner of the account or annuity among in-
6 vestment options,

7 “(II) a rollover of all or a portion of
8 the amount to another individual retire-
9 ment account or annuity or to an employer
10 plan or simple retirement account; or

11 “(III) 1 year after the transfer is
12 made, or

13 “(ii) a transfer which is made in a manner
14 consistent with guidance provided by the Sec-
15 retary.”

16 (b) EFFECTIVE DATE.—The amendment made by
17 this section shall apply with respect to transactions occur-
18 ring on or after January 1, 2006.

19 **SEC. 5. AUTOMATIC OR DEFAULT INVESTMENTS.**

20 (a) IN GENERAL.—Section 404 of the Employee Re-
21 tirement Income Security Act of 1974 (29 U.S.C. 1104)
22 is amended by adding at the end the following new sub-
23 section:

24 “(e)(1) A fiduciary with respect to an individual ac-
25 count plan shall be deemed to have satisfied the require-

1 ments of subsection (a)(1)(B) with respect to the plan,
2 in connection with any qualifying automatic investment
3 under the plan, to the extent those requirements pertain
4 to asset allocation as between equity instruments or in-
5 vestments and debt instruments or investments and to
6 such further extent as may be specified by the Secretary
7 in administrative guidance of general applicability.

8 “(2) For purposes of this subsection, the term ‘quali-
9 fying automatic investment’ means, in connection with a
10 participant in a plan, an investment of assets constituting
11 some or all of the participant’s accrued benefit under the
12 plan in a form of investment specified by the plan, in any
13 case in which—

14 “(A) such assets—

15 “(i) are attributable to employer contribu-
16 tions (and earnings thereon) made pursuant to
17 an automatic enrollment arrangement (as de-
18 fined in section 401(k)(13) of the Internal Rev-
19 enue Code of 1986),

20 “(ii) are attributable to distributions de-
21 scribed in section 401(a)(31)(B) of such Code,
22 or

23 “(iii) have been identified by the Secretary
24 as appropriate for automatic investment,

1 “(B) the plan provides for investment of such
2 assets in such form of investment unless, in lieu
3 thereof, alternative forms of investments, which are
4 also made available to the participant under the
5 terms of the plan, are selected by the participant,

6 “(C) the plan provides, under such form of in-
7 vestment, for investment of such assets under con-
8 straints designed to—

9 “(i) limit the risk associated with the in-
10 vestment portfolio to a reasonable level of risk
11 while seeking to maximize return consistent
12 with that level of risk, or

13 “(ii) minimize risk while seeking a reason-
14 able expected return, and

15 “(D) the expenses associated with the invest-
16 ment meet the standards of paragraph (3).

17 “(3)(A) The expenses associated with an investment
18 meet the standards of this paragraph if they do not exceed
19 reasonable expenses. Such expenses shall not be treated
20 as exceeding reasonable expenses solely because the ex-
21 penses in any year (excluding expenses for acquisition of
22 the investment) exceed the investment returns for that
23 year and cause a reduction in principal.

24 “(B) For purposes of subparagraph (A), the term ‘ex-
25 pense’ means any fee, charge, commission, load, or other

1 cost or expense associated with the investment (including
2 cost of acquisition, establishment, maintenance, surrender,
3 or termination of the investment and any other cost of
4 managing or administering the investment) to the extent
5 borne by participants.

6 “(C) The expenses associated with an individual re-
7 tirement plan (as defined in section 7701(a)(37) of the
8 Internal Revenue Code of 1986) shall not be treated as
9 meeting the standards of this paragraph if such expenses
10 exceed the expenses normally charged by the trustee or
11 custodian of a comparable individual retirement plan es-
12 tablished to receive rollover contributions (as defined in
13 section 408(d)(3) of such Code) which are not distribu-
14 tions described in section 401(a)(31)(B) of such Code.

15 “(4) The requirements of paragraph (2)(C) shall be
16 treated as satisfied with respect to investments provided
17 for by a plan to the extent such investments consist of—

18 “(A) a balanced portfolio comprised of both eq-
19 uity investments and either stable value or fixed in-
20 come investments provided by a financial institution
21 (or similar financial entity) that is regulated by the
22 United States or a State in any case in which—

23 “(i) the equity investments are broad-based
24 index funds or, to the extent permitted by the
25 Secretary under regulations, guidelines, or

1 other administrative guidance, actively managed
2 funds that are broadly diversified so as to mini-
3 mize the risk of large losses, and

4 “(ii) the stable value or fixed income in-
5 vestments—

6 “(I) are designed to comprise at least
7 20 percent of the total (measured in terms
8 of fair market value), and

9 “(II) are either diversified to minimize
10 the risk of large losses or are obligations
11 (which may include inflation-protected obli-
12 gations) issued by the United States, or

13 “(B) stable value investments.

14 For purposes of this paragraph, the term ‘stable value in-
15 vestments’ means investments provided by a financial in-
16 stitution regulated by the United States or a State that
17 are designed to preserve principal and provide a reason-
18 able rate of return, whether or not guaranteed, which may
19 include investments designed to maintain a stable dollar
20 value equal to the original value of the investment. The
21 Secretary may prescribe regulations or other administra-
22 tive guidance prescribing the manner in which the require-
23 ments of paragraph (A)(i) may be applied taking into ac-
24 count classes of investment determined on the basis of in-
25 vestment in large, intermediate, or small capitalization

1 funds, funds of varying styles (such as growth funds or
2 value funds), or funds consisting of, or not consisting of,
3 foreign or international securities.

4 “(5) An investment otherwise described in the pre-
5 ceding provisions of this subsection shall not be treated
6 as failing to be a qualifying automatic investment solely
7 by reason of:

8 “(A) the availability to the participant under
9 the terms of the plan of alternative forms of invest-
10 ment which meet the requirements of subsection
11 (c)(1) or are managed by an independent investment
12 manager;

13 “(B) the extent to which provisions of the plan
14 are or are not directed toward limiting the risk of
15 loss of principal under such investment or promoting
16 long-term capital appreciation;

17 “(C) any change or variation in the percentages
18 of equity and stable value investments included in
19 the investment portfolio or other aspects of the con-
20 stituent investments to the extent such change or
21 variation is based on:

22 “(i) automatic rebalancing or variable in-
23 vestment returns prior to periodic rebalancing,

24 “(ii) the participant’s age, or

1 “(iii) other factors relating to the partici-
2 pant’s situation, such as years until retirement,
3 other retirement plan coverage, financial situa-
4 tion, or investment preferences expressed to the
5 plan by the participant; or

6 “(D) the extent to which such investment con-
7 sists of interests in real estate or real-estate-based
8 investments, if such interests are broadly diversified
9 and do not comprise more than 10 percent of the eq-
10 uity portion of the total investment of plan assets.

11 “(6)(A) Notwithstanding paragraph (1), the require-
12 ments of subsection (a)(1)(C) shall not be treated as satis-
13 fied in connection with any qualifying automatic invest-
14 ment unless such investment (other than the stable value
15 portion thereof) is designed so that no more than 0.5 per-
16 cent of the total fair market value of the assets invested
17 are invested in securities issued by, or interests in the
18 property of, any single person.

19 “(B) For purposes of subparagraph (A), any person
20 and all affiliates thereof shall be treated as a single per-
21 son. A corporation is an affiliate of a person if such cor-
22 poration is a member of any controlled group of corpora-
23 tions (as defined in section 1563(a) of the Internal Rev-
24 enue Code of 1986, except that ‘applicable percentage’
25 shall be substituted for ‘80 percent’ wherever the latter

1 percentage appears in such section) of which person is a
2 member. For purposes of the preceding sentence, the term
3 ‘applicable percentage’ means 50 percent, or such lower
4 percentage as the Secretary may prescribe by regulation.
5 A person other than a corporation shall be treated as an
6 affiliate of any other person to the extent provided in regu-
7 lations of the Secretary. Regulations under this subpara-
8 graph shall be prescribed only after consultation and co-
9 ordination with the Secretary of the Treasury.

10 “(7) The Secretary shall issue regulations or other
11 administrative guidance specifying the manner in which
12 investments under independent professional investment
13 management pursuant to sections 402(c)(3) and 403(a)(2)
14 and other qualifying automatic investments may serve as
15 the default investment arrangement with respect to some
16 or all plan assets without adversely affecting plan compli-
17 ance with this part, as governed by subsection (c)(1) with
18 respect to assets over which participants or beneficiaries
19 exercise control.

20 “(8)(A) The Secretary may issue regulations or other
21 administrative guidance for compliance with the require-
22 ments of this subsection which are consistent with the pro-
23 visions of this subsection. Compliance with such regula-
24 tions or guidance shall be deemed to be compliance with
25 the requirements of this subsection. Such regulations or

1 guidance may express compliance in terms of percentages
2 of assets under management, flat dollar amounts, or other
3 factors.

4 “(B) The regulations issued pursuant to subpara-
5 graph (A) may include procedures for granting conditional
6 or unconditional exemptions of investments, classes of in-
7 vestments, investment managers, or classes of investment
8 managers from all or part of the requirements of this sub-
9 section. Such procedures shall be similar to the procedures
10 applicable under section 408(a) and subject to the same
11 standards and limitations as apply under section 408(a).
12 Such exemptions may include, in the case of qualifying
13 automatic investments, relief from, or simplified methods
14 of compliance with, the requirements of subparagraphs
15 (B) and (C) of subsection (a)(1) and the provisions of sub-
16 section (c).”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 this section shall apply with respect to investments made
19 on or after January 1, 2005 (irrespective of the extent
20 to which the Secretary of Labor has issued regulations,
21 guidelines, or other administrative guidance pursuant to
22 section 404(e) of the Employee Retirement Income Secu-
23 rity Act of 1974 (added by this section)).

1 **SEC. 6. MODIFICATION OF NOTICE REQUIREMENTS APPLI-**
 2 **CABLE TO ALTERNATIVE METHODS OF MEET-**
 3 **ING NONDISCRIMINATION REQUIREMENTS**
 4 **FOR MATCHING CONTRIBUTIONS.**

5 (a) SEMI-ANNUAL NOTICE REQUIREMENT.—Sub-
 6 paragraph (D) of section 401(k)(12) of the Internal Rev-
 7 enue Code of 1986 (relating to notice requirement) is
 8 amended by striking “year,” and inserting “year and dur-
 9 ing the 6th or 7th month of such year,”.

10 (b) NOTICE NOT REQUIRED FOR NONELECTIVE CON-
 11 TRIBUTIONS.—Clause (ii) of section 401(k)(12)(A) of such
 12 Code (relating to general rule for alternative methods of
 13 meeting nondiscrimination requirements) is amended by
 14 inserting “in the case of matching contributions described
 15 in subparagraph (B),” before “meets”.

16 (c) TECHNICAL CORRECTION.—Section
 17 401(k)(12)(D) of such Code is amended by striking “ap-
 18 praise” and inserting “apprise”.

19 (d) EFFECTIVE DATE.—

20 (1) NOTICE.—The amendments made by sub-
 21 section (a) shall apply to plan years beginning after
 22 December 31, 2006.

23 (2) NONELECTIVE CONTRIBUTIONS.—The
 24 amendments made by subsection (b) shall apply to
 25 plan years beginning after December 31, 2005.

1 **SEC. 7. REPORT ON LOW-COST INDIVIDUAL RETIREMENT**
2 **PLANS.**

3 After public comment and appropriate consultation
4 with private sector representatives, the Secretary of the
5 Treasury and the Secretary of Labor shall, not later than
6 December 31, 2005, jointly submit to Congress a report
7 containing their findings and recommendations regarding
8 the availability of, and means of promoting and encour-
9 aging the provision of, low-cost individual retirement plans
10 (as defined in section 7701(a)(37) of the Internal Revenue
11 Code of 1986), or similar retirement savings and invest-
12 ment vehicles, which are suitable for the preservation and
13 maintenance of smaller retirement benefits or accounts on
14 a widespread and portable basis and for large numbers
15 of moderate- and lower-income individuals.

○